

Don't Let Domino's Pizza Sidestep and Weaken Menu Labeling

June 1, 2018

Dear Senator:

We, the undersigned organizations, write in strong opposition to the bill offered by Senators Roy Blunt (R-MO) and Lamar Alexander (R-TN)—a substitute amendment to the House-passed Common Sense Nutrition Disclosure Act (H.R. 772)—that would exempt restaurant chains with at least 75 percent of sales off-premises, like Domino's Pizza and other major take-out chains, from labeling calories for their menu items inside the establishment. In addition, the bill would weaken menu labeling enforcement and consumer protection measures. The bill could be hotlined for unanimous approval by the Senate as early as Monday, June 4.

Menu labeling went into effect May 7, 2018, after several delays since 2014. The law requires chain restaurants, supermarkets, convenience stores, and other similar retail food establishments to post calories on menus and menu boards and for foods on display. For the first year, the Food and Drug Administration (FDA) has stated the agency would provide technical assistance and work with covered establishments to come up to speed, and not issue fines. Earlier this month, the FDA released additional guidance for industry, further addressing any questions about compliance. The FDA Commissioner Dr. Scott Gottlieb has demonstrated agency-wide commitment to menu labeling and its cooperative, collaborative implementation with the food industry.

Unlike the vast majority of chains that are already providing menu labeling, including other pizza chains, companies like Domino's Pizza are trying to circumvent menu labeling while at the same time weakening FDA, state, and local enforcement and limiting consumer protection measures. The nation's top 50 restaurant chains, in addition to many of the top supermarket and convenience store chains, already provide calorie information (either online or in the restaurant). Further, the FDA has previously provided chain pizza establishments with the flexibility to declare calories for the pizza per slice rather than total calories per pie. Many pizza chains are already labeling different sizes, varieties, and toppings on menus and menu boards, and can do so by providing ranges for calories. These efforts demonstrate that labeling can be accomplished clearly, sensibly, and at a reasonable cost.

Menu labeling ensures that consumers can make informed choices when eating out at chain restaurants, can help them make lower-calorie choices, and can create lower-calorie menu options. A 2018 review of nearly 30 studies from the well-respected Cochrane Collaboration found that menu labeling helps people reduce their calories by about 50 calories per meal, on average. Consumers want nutrition information when eating out: over 80 percent of Americans support menu labeling in chain restaurants, including pizza, supermarkets, and convenience stores. This is true for Republicans, Democrats, and Independents.

Our specific objections to the H.R 772 substitute amendment are as follows. The bill:

- Would exempt chain restaurants from providing calorie information inside their establishment if 75 percent of orders are placed off-premises (such as online or by phone). Online calorie

labeling does not allow customers to make informed choices when ordering inside the establishment. This would exempt not only pizza chains but other restaurants, such as Chinese food, that have a large takeout business. The provision is far too broad: given increased online ordering and popularity of takeout, it's not uncommon for many restaurants to have a majority of sales off-premises.

- Allows restaurants and other food establishments to forgo maintaining records on nutrition information. Thus, there would be no requirement for them to substantiate accuracy of the calorie and other nutrition information for menu items.
- Prevents the FDA from taking enforcement action for 30 days, an unprecedented weakening of FDA's enforcement ability.
- Bars any private civil action despite the fact that many states and localities have required calorie labeling for years and not one restaurant chain has been sued, including Domino's Pizza.
- Bars any state or locality from petitioning for an exemption from express preemption provisions in statute. This is an unprecedented attack on consumer protection which could open the door to other attacks on state and local labeling laws.
- Jeopardizes and may further delay enforcement. For instance, rulemaking would likely be needed for the bill's off-premises sales exemption which could further delay the enforcement of menu labeling requirements by the FDA, states, and localities.

We urge you to vote against this bill. We do not believe Congressional action is needed when the FDA has already provided significant flexibility for pizza chains, and we oppose efforts that would weaken menu labeling enforcement and consumer protection measures.

Sincerely,

Academy of Nutrition and Dietetics
American Association of Justice
American Heart Association
American Public Health Association
Center for Science in the Public Interest
Changelab Solutions
Consumer Federation of America
Consumers Union
Earthjustice
National Association of County and City Health Officials
National Consumers League
National WIC Association
Public Health Advocates